

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY

SHAUNNE OLSON,

Plaintiff,

-vs-

Case No: 4:06-CV-0154-SEB-WGH

HORNBLOWER MARINE SERVICES, INC.,

Defendant.

_____ /

**PLAINTIFF'S REPLY TO DEFENDANT'S RESPONSE IN OPPOSITION TO
PLAINTIFF'S MOTION FOR MAINTENANCE AND CURE**

Defendant's response is consistent with Plaintiff's Motion: allegation one of his Affidavit reads:

1. On or about May 25th I assisted some other crewmembers lifting a welder 10 feet weighing 100 and 200 pounds out of the forward port void with a rope. Later that night I noticed a twinge in my lower back when getting off a stool and at around 2:30 a.m. the following morning when I went to get a drink of water I could not walk because of the excruciating back pain after which time I was taken from the vessel to a hospital.

A seaman who is injured during a period of relaxation while on shore leave is injured in the "service of the ship" so as to be entitled to maintenance and cure; that proposition has been well established for more than half a century. Warren v United States, 340 U.S. 523 (1951).

Any ambiguities in determination of whether or not maintenance and cure is payable are to be resolved in Plaintiff's favor. Hughes v Hunter Marine Transport, Inc., 1997 WL 834547 (M.D. Tenn. 1997).

Defendant, before and after representation by counsel, has had no justification of its egregious refusal to provide maintenance and cure to Plaintiff and payment of attorney fees in this instance is warranted.

O'BRYAN BAUN COHEN KUEBLER

/s/ Dennis M. O'Bryan

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DATED: May 14, 2007

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 14th day of May, 2007 the foregoing was filed using the Court's ECF Filing System and will be served on counsel for Defendant, Stephanie R. Miller, via first class mail with postage fully prepaid thereon.

/s/ Dennis M. O'Bryan
